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SENATE BILL 514

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO PUBLIC HEALTH; ENACTING THE LIMITING ALCOHOL
ADVERTISING NEAR YOUTH ACT; BANNING ALCOHOLIC BEVERAGE OUTDOOR
ADVERTISEMENTS WITHIN FIVE HUNDRED FEET OF ANY PUBLIC
PLAYGROUND, ELEMENTARY SCHOOL, SECONDARY SCHOOL, INSTITUTION OF
HIGHER LEARNING OR CHILD CARE FACILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Limiting Alcohol Advertising Near Youth Act".

Section 2. DEFINITIONS.--As used in the Limiting Alcohol
Advertising Near Youth Act:

A. "alcoholic beverage" means distilled or
rectified spirits, potable alcohol, brandy, whiskey, rum, gin,
aromatic bitters or any similar beverage, including blended or
fermented beverages, dilutions or mixtures of one or more of

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1 the foregoing containing more than one-half of one percent
2 alcohol by volume, but "alcoholic beverages" does not include
3 medicinal bitters;

4 B. "alcoholic beverage outdoor advertisement" means
5 any sign, poster, placard, device, graphic display or any other
6 form of advertisement bearing a word, mark or description, or
7 other device that is used to advertise an alcoholic beverage or
8 the business of a person who manufacturers, sells or
9 distributes an alcoholic beverage in publicly visible
10 locations. "Alcoholic beverage outdoor advertisement" does not
11 include:

12 (1) advertisements inside licensed premises,
13 as defined by the Liquor Control Act;

14 (2) advertisements that contain the name or
15 slogan of the licensed premises that have been placed for the
16 purpose of identifying the licensed premises;

17 (3) neon or electronically charged signs, if
18 otherwise allowed by the alcohol and gaming division of the
19 regulation and licensing department or by local ordinance, on
20 licensed premises that are provided as part of a promotion of a
21 particular brand of alcoholic beverage;

22 (4) advertisements appearing on radio or
23 television;

24 (5) advertisements in a public vehicular
25 conveyance for hire, on a race car while participating at a

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1 professional racing event or at a permanent racetrack facility,
2 on a boat participating in a racing event or a boat show, on an
3 aircraft, on a bicycle or on the clothing of a member of a
4 bicycle team participating in an organized bicycle race or in a
5 newspaper, magazine or other literary publication published
6 periodically; and

7 (6) an identifying label affixed to a
8 container as authorized by law; and

9 C. "publicly visible location" includes outdoor
10 billboards, awnings, electric signs, sides of buildings,
11 screens, benches, barriers, stages, fences, signs attached to
12 poles, posts or other figures and freestanding signboards,
13 wherever located, whether indoor or outdoor, however
14 manufactured and comprising whatever materials.

15 Section 3. ALCOHOLIC BEVERAGE OUTDOOR ADVERTISEMENTS.--

16 A. A person shall not place an alcoholic beverage
17 outdoor advertisement in a publicly visible location within
18 five hundred feet of any public playground, elementary school
19 or secondary school, institution of higher learning or child
20 care facility.

21 B. Any person seeking to place an alcoholic
22 beverage outdoor advertisement in a publicly visible location
23 within the five-hundred-foot limit established in Subsection A
24 of this section may apply for an exemption with the alcohol and
25 gaming division of the regulation and licensing department in

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1 which the exemption would apply. The alcohol and gaming
2 division shall grant the exemption if the applicant
3 demonstrates that the five-hundred-foot limit denies the
4 applicant a reasonably necessary or appropriate opportunity to
5 communicate truthful information regarding alcoholic beverages
6 to adult consumers. In determining whether the applicant has
7 been denied such an opportunity, the alcohol and gaming
8 division may consider:

9 (1) locations for outdoor advertising that are
10 outside the five-hundred-foot limit and the percentage of the
11 adult population that resides or works in these areas;

12 (2) the availability of other forms of
13 advertising to reach adult audiences and their relative costs;

14 (3) any advertising practice codes or
15 guidelines with which the applicant voluntarily has agreed to
16 comply; and

17 (4) any other relevant evidence.

18 Section 4. PUBLIC SERVICE ADVERTISING.--The Limiting
19 Alcohol Advertising Near Youth Act shall not be construed to
20 prohibit the display of public service messages designed to
21 communicate the hazards of alcoholic beverages or to encourage
22 minors to refrain from consuming or purchasing alcoholic
23 beverages. However, this section shall not be construed to
24 permit such a message when it is made in conjunction with the
25 positive display of a representation, image, artwork,

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1 photograph, logo, graphic, device, display, regalia, insignia,
2 indicia, design, slogan, trade name, brand name, product name
3 or permittee or licensee name used for marketing or promotion
4 of alcoholic beverages.

5 Section 5. YOUTH ALCOHOL ADVERTISING MONITOR--
6 APPOINTMENT--DUTIES--POWERS.--

7 A. The alcohol and gaming division of the
8 regulation and licensing department shall appoint a youth
9 alcohol advertising monitor. The monitor may delegate the
10 duties and powers granted by this section to other persons
11 under the monitor's direct supervision.

12 B. The youth alcohol advertising monitor shall
13 administer and enforce the terms and conditions of the Limiting
14 Alcohol Advertising Near Youth Act. The monitor shall:

15 (1) make inspections of advertising in
16 publicly visible locations in accordance with rules promulgated
17 by the alcohol and gaming division of the regulation and
18 licensing department;

19 (2) initiate appropriate action to bring about
20 compliance with the Limiting Alcohol Advertising Near Youth Act
21 and other applicable law if inspection discloses any instance
22 of noncompliance; and

23 (3) investigate any complaints of alleged
24 violations of the Limiting Alcohol Advertising Near Youth Act
25 and make findings of fact according to rules that the alcohol

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1 and gaming division has promulgated as to whether advertising
2 is in compliance with the provisions of that act.

3 Section 6. APPEALS.--A person aggrieved by a finding of
4 fact by the youth alcohol advertising monitor or the monitor's
5 designee shall have the right to appeal the finding of fact to
6 the alcohol and gaming division of the regulation and licensing
7 department pursuant to procedures established by the alcohol
8 and gaming division for appealing other sign violations.

9 Section 7. STRICTER LOCAL REGULATIONS PERMITTED.--A
10 county or municipality may enact any regulation of alcoholic
11 beverage outdoor advertisements that is more restrictive than
12 those contained in the provisions of the Limiting Alcohol
13 Advertising Near Youth Act.

14 Section 8. PENALTIES.--

15 A. Any person that the youth alcohol advertising
16 monitor finds to have violated a provision of the Limiting
17 Alcohol Advertising Near Youth Act shall be subject to the
18 following penalties:

19 (1) a first violation shall incur a civil
20 penalty of five hundred dollars (\$500) and fifty dollars
21 (\$50.00) per day for each day that the violation continues;

22 (2) a second violation shall incur a civil
23 penalty of one thousand dollars (\$1,000) and one hundred
24 dollars (\$100) per day for each day the violation continues;
25 and

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1 (3) a third or subsequent violation shall
2 incur a civil penalty of five thousand dollars (\$5,000) and
3 five hundred dollars (\$500) per day for each day the violation
4 continues.

5 B. Causing, permitting, aiding, abetting or
6 concealing a violation of a provision of the Limiting Alcohol
7 Advertising Near Youth Act shall constitute a violation of that
8 act.

9 C. All revenues collected by the alcohol and gaming
10 division of the regulation and licensing department pursuant to
11 the provisions of the Limiting Alcohol Advertising Near Youth
12 Act shall be placed in the current school fund.

13 D. In addition to the other remedies provided in
14 this section, any violation of the Limiting Alcohol Advertising
15 Near Youth Act may be enforced by a civil action brought by the
16 alcohol and gaming division of the regulation and licensing
17 department. A court may grant, as it deems appropriate, any or
18 all of the following remedies:

19 (1) a temporary or a permanent injunction
20 barring the person from violating the provisions of the
21 Limiting Alcohol Advertising Near Youth Act;

22 (2) an assessment of the person violating the
23 provisions of the Limiting Alcohol Advertising Near Youth Act
24 for the costs of any investigation, inspection or monitoring
25 survey that led to the establishment of the violation,

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1 including but not limited to the reasonable costs of preparing
2 and bringing legal action pursuant to this subsection and
3 reasonable attorney fees;

4 (3) costs incurred in removing, correcting or
5 terminating the adverse effects resulting from the violation;
6 and

7 (4) a finding, after two or more violations of
8 the provisions of the Limiting Alcohol Advertising Near Youth
9 Act involving the same alcoholic beverage outdoor
10 advertisement, that the alcoholic beverage outdoor
11 advertisement constitutes a public nuisance.

12 E. A party found in violation of the provisions of
13 the Limiting Alcohol Advertising Near Youth Act has a right to
14 appeal the finding of violation pursuant to the procedures
15 established in Section 6 of that act.